



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 1, 2003

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P. O. Box 4087
Austin, Texas 78773-0001

OR2003-6937

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188583.

The Texas Department of Public Safety (the "department") received a request for all documents relating to Lone Star Transportation, Inc. from 1990 to the present. You advise that you are making much of the requested information available to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You contend that the highlighted portions of certain printouts from a federal database are confidential under federal law and therefore must be withheld pursuant to section 552.101. You explain that these printouts consist of "carrier profile information generated by the U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA)." You further explain:

These documents reflect compilations of data from the states regarding violations of the federal Motor Carrier Safety Regulations and accidents involving vehicles operated by regulated carriers. This database allows Texas to obtain a record of all accidents and violations noted against an interstate carrier rather than just those that occurred in this state. . . . The database contains names of drivers cited or involved in accidents so regulatory authorities can more easily identify violations However, we are advised

by the FMCSA Freedom of Information Office that drivers' names are excepted from public disclosure pursuant to 5 U.S.C.A. § 552(b)(6) and would not be released by FMCSA. The Department believes that because this information was received from a federal agency and is confidential under federal law, it should not become publicly available simply because it was shared with a Texas agency.

Section 552(b)(6) provides for confidentiality of certain information under the federal Freedom of Information Act. On this basis, we conclude that the information at issue is excepted from disclosure under section 552.101 of the Government Code, as the FMCSA in this case deems it to be confidential under federal law. *See generally* Open Records Decision No. 561 (1990) (when information in possession of federal agency is "deemed confidential" by federal law, such confidentiality is not destroyed by sharing of information with governmental body in Texas). Therefore, the highlighted information in the submitted carrier profiles must be withheld pursuant to section 552.101 of the Government Code. The remaining information in the carrier profiles must be released to the requestor.

We now address the submitted driving record information and driver's license information. Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]

...

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

Generally, under section 552.130 of the Government Code, the department would be permitted to release information relating to a Texas driver's license *only* if such release is authorized by chapter 730 of the Transportation Code.

Section 730.004 of the Transportation Code provides:

Notwithstanding any other provision of law to the contrary, including Chapter 552, Government Code, except as provided by Sections 730.005-730.007, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.

Section 730.003 provides that, for purposes of chapter 730 of the Transportation Code:

(1) "Agency" includes any agency or political subdivision of this state, or an authorized agent or contractor of an agency of this state, that compiles or maintains motor vehicle records.

...

(4) "Motor vehicle record" means a record that pertains to a motor vehicle operator's or driver's license or permit, motor vehicle registration, motor vehicle title, or identification document issued by an agency of this state or a local agency authorized to issue an identification document. The term does not include:

(A) a record that pertains to a motor carrier; or

(B) an accident report prepared under Chapter 550 or 601.

Transp. Code § 730.003(1), (4). Section 730.004 only applies to an "agency" that compiles or maintains motor vehicle records. *See* Transp. Code § 730.004. We believe that the department compiles or maintains motor vehicle records and, therefore, section 730.004 applies to the department. Furthermore, none of the exceptions for required or permitted disclosure under chapter 730 of the Transportation Code applies. *See* Transp. Code §§ 730.005 – .007. Accordingly, the submitted driving record and driver's license information must be withheld under section 552.130 in conjunction with section 730.004 of the Transportation Code. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection).

In summary, the department must withhold the highlighted information in the submitted carrier profiles pursuant to section 552.101 of the Government Code in conjunction with federal law. The submitted driving record and driver's license information must be withheld under section 552.130 in conjunction with section 730.004 of the Transportation Code. The remaining submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/lmt

Ref: ID# 188583

Enc. Submitted documents

c: Mr. John Christopher Clark
O'Neal, Brown & Clark, P.C.
544 Mulberry Street, Suite 1001
Macon, GA 31201-2774
(w/o enclosures)